



**Indiana Department of Environmental Management
Office of Legal Counsel**

**Rule Fact Sheet
September 18, 2012**

**DEVELOPMENT OF NEW RULES AT 329 IAC 11.5 CONCERNING REGISTRATION OF
BIOMASS ANAEROBIC DIGESTION FACILITIES AND BIOMASS GASIFICATION FACILITIES**

LSA Document #09-193

Overview

The Indiana Department of Environmental Management has proposed rule language for new rules at 329 IAC 11.5 concerning registration, including construction and expansion of a facility; storage and operational requirements; and closure and financial assurance for biomass anaerobic digestion facilities and biomass gasification facilities. The rulemaking also proposes amendments to the exclusions from the solid waste processing rules.

Citations Affected

Adds: 329 IAC 11.5

Amends: 329 IAC 11-3-1

Repeals: 329 IAC 11-17; 329 IAC 11-18;
329 IAC 11-19; 329 IAC 11-20

Affected Persons

The majority of affected persons are farm owners.

Reason(s) for the Rule

IDEM has been approached by several companies interested in developing biomass anaerobic digesters or biomass gasifiers to process specific waste streams and recover methane or ethanol. Most of the proposals have focused on animal manure as the feedstock but some have also proposed to add other organic waste streams. The interest in the development of alternative energy sources has been the primary driver of these projects. Currently, such an operation may fit under a variety of environmental permitting programs depending upon the specific facility circumstances. For example, a concentrated animal feeding operation (CAFO) or a confined animal operation (CFO) could propose to construct and

operate such a facility on the same property permitted under the National Pollutant Discharge Elimination System (NPDES) program as a CAFO or approved under state rules as a CFO and incorporate the operation of the facility into the CAFO or CFO permit. The same facility proposed at an off-site location that accepted manure from multiple farms would not be a CAFO or CFO and instead would be required to obtain either a solid waste processing facility permit or an exemption from the solid waste processing facility rules under 329 IAC 11-3-1(13) as a solid waste management activity that does not pose a threat to human health or the environment.

Economic Impact of the Rule

There is some fiscal impact associated with this rulemaking due to the cost of compliance with basic storage, operational, and closure requirements and the cost of providing a surety bond for facility cleanup and closure. However, the rulemaking provides relief to the regulated community from the requirement of obtaining a solid waste processing facility permit that costs \$12,150 every five years and \$2,000 every year for an operating fee paid to IDEM. In addition, there are the costs of developing the permit application (\$2,500-\$25,000) and the cost of compliance (\$5,000-\$20,000 per year). This rulemaking allows for the no cost registration of biomass digester and gasifier facilities. There is some cost of compliance for planning, storage and operational requirements, closure and a surety bond per facility per year under the registration-\$5,000-\$35,000, depending on the amount of waste received by the facility. It is unknown at this time how many facilities will be registered under this rule.

There is a minimal fiscal impact on the agency in

terms of costs to process the registrations because a registration has minimal engineering and geology concerns and requirements compared to a permit.

Benefits of the Rule

Neither the solid waste processing facility rules nor the CAFO or CFO rules were written with the regulation of this type of facility in mind. This rule is being proposed to ensure consistent regulation of all affected facilities.

Description of the Rulemaking Project

329 IAC 11.5 proposes the registration of biomass anaerobic digestion facilities and biomass gasification facilities. The First Notice of Comment Period, published on March 25, 2009 (DIN: 20090325-IR-329090193FNA), requested comments on two alternatives: excluding the described biomass facilities from regulation as solid waste processing facilities, along with other amendments to the exclusions in 329 IAC 11-3-1; and adding a new rule requiring registration, operational requirements, closure, and financial assurance for the described biomass facilities. Legislation has been enacted (House Enrolled Act 1187-2011), which adds definitions and a requirement that IDEM gives prior approval to a person constructing or expanding a biomass anaerobic digestion facility and biomass gasification facility. These facilities are also subject to this rulemaking.

This rulemaking will add statutory definitions of "biomass", "biomass anaerobic digestion facility", and "biomass gasification facility", as well as requirements that a person cannot construct or expand a biomass anaerobic digestion facility or a biomass gasification facility without obtaining prior approval from the department.

Scheduled Hearings:

February 21, 2012, 1:30 pm, Conference Center Room A, Indiana Government Center South, Indianapolis, IN.

September 18, 2012, 1:30 pm, Conference Center Room A, Indiana Government Center South, Indianapolis, IN.

Consideration of Factors Outlined in Indiana Code 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

1) All existing physical conditions and the

character of the area affected.

2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.

3) Zoning classifications.

4) The nature of the existing air quality or existing water quality, as appropriate.

5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.

6) Economic reasonableness of measuring or reducing any particular type of pollution.

(7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:

(A) human, plant animal, or aquatic life; or

(B) the reasonable enjoyment of life and property.

Consistency with Federal Requirements

The new and amended rules are consistent with federal laws, rules, guidance.

Rulemaking Process

The first step in the rulemaking process is a first notice published in the Indiana Register. This includes a discussion of issues and opens a first comment period. The second notice is then published which contains the comments and the departments responses from the first comment period, a notice of first meeting/hearing, and the draft rule. The Solid Waste Management Board holds the first meeting/hearing and public comments are heard. The proposed rule is published in the Indiana Register after preliminary adoption along with a notice of second meeting/ hearing. If the proposed rule is substantively different from the draft rule, a third comment period is required. The second public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule is reviewed for form and legality by the Attorney General, signed by the Governor, and becomes effective 30 days after filing with Legislative Services.

IDEM Contact

Additional information regarding this rulemaking action can be obtained from Lynn West, Rules Development Branch, Office of Legal Counsel, (317) 232-3593 or (800) 451-6027 (in Indiana).